IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 1 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BILIMORA MUNICIPALITY - Appellant(s)
Versus
KASHIBEN PRABHUBHAI & Ors.- Respondents

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Appearance :
MR YV SHAH for Appellant(s) : 1,
MR MI PATEL for Respondent (s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7,1.2.8

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/11/2006

ORAL JUDGMENT

1. Mr.Y.V. Shah, learned counsel for the appellant. None for the respondents, though name of Mr.M.I.Patel, learned

counsel is shown in the Daily Board.

2. The respondent No.5 – Gandhi Parbhubhai Parshottambhai (since deceased) filed the suit for declaration that the Monofilament Yarn imported by the plaintiffs would be covered under Entry No.19 of Schedule 1 of the Octroi Rules and not under Entry No.43 for the purposes of levy of Octroi. It was contended before the trial court that the Municipality was unjustified in directing for payment of the Octroi under Entry No.43.
3. The defendant appeared before the Court and contested the matter submitting inter-alia that item imported by the plaintiff was made out of plastic and therefore, it would fall under clause 43.
4. The learned trial court, after recording the evidence and hearing the parties, dismissed the suit but on an appeal, the appellate court, after comparison of clause Nos.19, 43 and 35 of the Octroi Rules held that the Monofilament Yarn imported by the plaintiffs would come within the definition of other type of yarn and therefore, would be excisable under clause 19 of the Octroi Rules. Being aggrieved by the said judgment and decree, the Municipality is before this Court.
5. The appeal has been admitted for hearing the parties on

the following substantial question of law;

"Does the Monofilament Yarn imported by the respondents fall within entry No.19 of Schedule-A of the Octroi Rules or it is a plastic thing falling under Entry No.43 for the purpose of levy of Octroi?"

6. Mr.Shah, learned counsel for the appellant, after taking me through Entry No.43 submits that as the things made of plastics, Bakalites, celluloids etc. are included in clause 43, Monofilament Yarn would be covered under Entry No.43 and not under clause 19 which refers to other type of yarn.
7. Entry Nos.19, 43 and 35 read as under;-

Entry No.19:- Each type of yarn made of silk, artificial silk, and wool except a punned cotton thread and similar other type of yarn, wool, inclusive of raw wool, used for weaving cloth.

Entry No.43:- Each type of toys, sports entertainment implements, musical instruments, spects and frames, camera and each implement of photography, photoframe,

bioscopes, Gramophones, records, pins, sound box and such other gramophonic spare-parts, watches and their spare-parts, Baba Car, Baba-Motors, Tri-cycles, push chairs, Thermoses, things made of plastic, Bakelites, Celluloids, ivory items, Sewing, Knitting and Embroidery machines, stoves and petromax.

Entry No.35:- Each type of sewing threads, string & ropes and cot strip ribbon not otherwise provides.

8. From entry No.43, it would appear that the items made of plastic would be covered under Entry No.43 and in absence of any other clause which covers the yarn, item No.43 would control the rights of the parties. It is trite law that if a particular item falls under different entries then the benefit should always go to the importer, consumer/seller. In the present matter, the things made of plastic would fall under clause 43, but as entry No.19 contains the words “similar type of other yarns”, the item would fall under entry No.19. The taxing authority cannot be allowed to take advantage of the confusion which it had created. The learned first appellate court, in the opinion of this Court, was justified in restraining the

Municipality from charging the Octroi under Entry No.43. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. No costs.

9. A decree be framed accordingly.

(R.S. GARG,J.)

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